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Supreme Court of the United States

OCTOBER TERM, 1969

No. 558

HOUSTON H. FEASTER, individually and as Director, Alabama State Docks Department and the STATE OF ALABAMA,

Petitioners,

versus

UNITED STATES OF AMERICA and WARREN S. LANE, as Mediator, National Mediation Board,

Respondents.

BRIEF OF THE NORTH CAROLINA PORTS AUTHORITY AS AMICUS CURIAE.

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STATEMENT OF INTEREST

The North Carolina Ports Authority is a body politic and corporate created by the General Assembly of North Carolina for the purpose of promoting, developing and operating the harbors and seaports of the State so as to make expeditious and efficient the handling of water-borne commerce from and to any place in the State and other states and foreign countries. PORTS AUTHORITY v. TRUST CO., 242 N. C. 416, 88 S. E. 2d 109; N.C.G.S. 143-216 through 143-228.1.

Among other powers given to it in order to carry out its broad statutory purposes, the Ports Authority is empowered by statute to acquire, own and operate at its harbors and seaports a line of terminal railroads with all necessary equipment and appurtenances. N.C.G.S. 143-223.

The North Carolina Ports Authority has established and operates two port terminals, one located at Wilminton and the other at Morehead City. Both terminals have docks, berths, sheds and cargo handling facilities and equipment. Both terminals operate terminal railroads in conjunction with the port facilities. All rail interchange and switching is performed by personnel of the terminal railroad.

At the terminal in Wilmington, the Authority owns and maintains six miles of track. At Morehead City, the Authority owns and maintains three miles of track. Neither of these two railroad operations has ever been certified by the Interstate Commerce Commission. The services performed by the terminal railroads consist of switching railroad cars from one point to another within the terminal. Most of the rail mileage consists of sidings to which two line-haul carriers have access. No compensation is realized by either terminal railroad from the switching and interchanging. A standard charge is made when a car is moved cross-terminal to privately owned warehouses.

The terminal railroad at Wilmington has eleven full-time personnel. The railroad at Morehead City has only three employees.

As to terminal railroad employees, the North Carolina General Statutes 143-223 provides that:

> ". . . the Authority shall have the right and authority to make agreements as to scale of wages, seniority, and working conditions with locomotive engineers, locomotive firemen, switchmen and switch engine foremen and hostlers engaged in the operation of the terminal railroads provided for in this section, and the service and equipment pertinent thereto. And should the said Department exercise the authority herein given, then in such event it shall be the duty of the said Department to make such agreements with said employees hereinabove specified, in accordance with the act of Congress known as the Railroad Labor Act (U.S.C. Title 45, sections 151-163) as amended or as

> hereafter amended to the end that the same agreements as to seniority and working conditions will obtain as to said employees and the standard rate of pay be provided, as are in force relative to like employees of interstate railroads operating in the same territory with terminal railroads authorized hereby . . ."

At present time there is pending before the National Mediation Board (hereinafter called the N.M.B.) File No. C-3900, a petition filed by the International Longshoremen's Association (hereinafter called I.L.A.) for investigation of an alleged representation dispute among employees of the terminal railroads.

By "Findings Upon Investigation" dated November 4, 1969, the N.M.B. has found in file No. C-3900, that the North Carolina Ports Authority is subject to the jurisdiction of the Railway Labor Act and is within the jurisdiction of the N.M.B.

The N.M.B. in its findings cites the "under common control" language of Title 45, U.S.C., section 151 (First) and the decision of the Circuit Court of Appeals in UNITED STATES, ET AL. v. FEASTER, 410 F. 2d 1354 (5th Cir., 1969).

The North Carolina Ports Authority contends that the N.M.B. has no jurisdiction over its employees other than the terminal railroad employees. The N.M.B. ruling in FEASTER, supra, was to the effect that all employees of the Alabama Ports Authority were within its jurisdiction.

The decision of the Court in this case will directly and substantially effect the North Carolina Ports Authority and its two seaport terminals.

ARGUMENT

A SUBSTANTIAL FEDERAL QUESTION IS PRESENTED WHICH VITALLY AFFECTS THE RELATIONSHIP OF THE STATES TO THEIR EMPLOYEES AS WELL AS THE FEDERAL-STATE RELATIONSHIP.

All employees at the North Carolina Port Terminals are employees of the State fully subject to the State's policy as to wages, hours, working conditions, workmen's compensation, retirement benefits and the many other facets which make up the employer-employee relationship.

Like the Alabama State Docks Department, however, the State of North Carolina and its Port Authority has recognized a distinction between its employees engaged essentially in the maritime functions of the port terminals and those employees working on the terminal railroads.

When the North Carolina General Assembly enacted the State Ports Authority Act in 1945, it provided that as to terminal railroad employees, the Authority would have the right to make agreements as to the scale of wages, seniority and working conditions with locomotive engineers, firemen, switchmen and other employees of the terminal railroad. The statute specifically provided that (G.S. 143-223):

> ". . . it shall be the duty of said Department to make such agreements with said employees hereinabove specified, in accordance with the act of Congress known as the Railroad Labor Act (U.S.C. Title 45, sections 151-163) . . . to the end that the same agreements will obtain to said employees and the standard rate of pay be provided, as are in force relative to like employees of interstate railroads operating in the same territory with terminal railroads authorized hereby . . ."

The Alabama Docks Department has treated its terminal railroad employees as being within that "state within a state" described by the Supreme Court in CALIFORNIA v. TAYLOR, 353 U. S. 553. The application of this special demarcation of railroad employees is seen in Petitioners' Appendix F, J, K and L.

In TAYLOR, the Court recognized that state-owned railroads form a vital link in the national transportation system

and that their uninterruped operation was of importance to the national flow of commerce.

It is conceded that the states, by engaging in interstate commerce by rail, have subjected certain of their employees to the power of Congress. However, the decision of the N.M.B. in the Petitioners' case, as affirmed by the Fifth Circuit Court of Appeals, extends the reach of the Railway Labor Act far beyond railway employees and invades the substantial right of the states to formulate and carry out policy with respect to its own employees.

In legislating in the labor relations field, Congress has, with the exception of the Railway Labor Act, consistently excluded public and state employees. This is manifested by the National Labor Relations Act, 29 U.S.C., section 152(2); the Labor Management Relations Act, 29 U.S.C., section 141; the Fair Labor Standards Act, 29 U.S.C., section 201. Further, it is generally recognized that the employer-employee relationship is subject to regulation by the state in the exercise of its police power. STATE v. WHITAKER, 228 N.C. 352, aff'd, WHITAKER v. STATE, 69 S. Ct. 251, 335 U. S. 525, 93 L. Ed. 212.

Consistent with its right, the states have adopted comprehensive statutes and policy for those of its employees not covered by act of Congress in the working relationship. All branches of the federal government have traditionally refrained from interference with the employer-employee relationship existing between the state and its employees.

Neither the legislative purpose or history of the Railway Labor Act supports the expanded definition of "carrier" to include state employees not engaged in carrier activities. Indeed, the sponsor of the Railway Labor Act, Joseph B. Eatman, testified that the definition of "carrier" was drawn so as not to go beyond carriers and their subsidiaries engaged in transportation (REPORT OF HEARINGS OF THE SENATE

COMMITTEE ON INTERSTATE COMMERCE ON S. 3266, 73rd CONGRESS).

The purpose of the Railway Labor Act is to provide a method of settling labor disputes throughout the railroad industry through an instrument of industry-wide government. VIRGINIA RY. CO. v. SYSTEM FEDERATION NO. 40, 57 S. Ct. 592, 300 U. S. 515, 81 L. Ed. 789; CALIFORNIA v. TAYLOR, supra.

The bulk of the workers at the Alabama Dock at Mobile are engaged in non-rail work either of a maritime or unrelated nature. To say the least, the relationship between the terminal railroad and the non-rail employees is tenuous.

As stated by the Eighth Circuit Court of Appeals in NORTHWEST AIRLINE COMPANY v. JACKSON, 185 F. 2d 74:

> "The Railway Labor Act was intended to apply only to transportation activities and that work which bears more than a tenuous, negligible and remote relationship to the transportation activities. It was not intended to apply to all work, regardless of its connection to transportation, merely because the company carrying on the work included carrier activities within its company functions."

In this respect, see also, PAN AMERICAN AIRWAYS v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS, 324 F. 2d 217 (9th Cir. 1963) where the Court reasoned that the mere fact that an employer may own a railroad does not convert all of its employees into transportation workers.

The ruling of the N.M.B. and the refusal of the court below to review that ruling leaves the N.M.B. as the final arbiter in determining the scope of the Railway Labor Act. The court's decision opens up the Act for arbitrary interpretation without review.

We disagree with the characterization of the court below

that the error of the N.M.B. is not of "magna or summa quality". Substantial rights of the sovereign states are involved as well as the relationship between the federal government and the states.

This Court should review and decide the vital questions involved without waiting for the exhaustion of the administrative process.

CONCLUSION

For the reasons foregoing, the petition for writ of certiorari should be granted so that the substantial federal questions may be settled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ralph Moody, Deputy Attorney General of the State of North Carolina, and one of the attorneys for the North Carolina Ports Authority, amicus curiae herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 14th day of November 1969, I served copies of the foregoing Brief of the North Carolina Ports Authority on the several parties, as follows:

On the United States and on Warren S. Lane, as Mediator, National Mediation Board, by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid to Charles S. Whitespunner, Esquire, United States Attorney for the Southern District of Alabama, at Room 311, Federal Building, Mobile, Alabama, and by mailing a copy in a duly addressed envelope with air mail postage prepaid to The Solicitor General, Department of Justice, Washington, D. C., 20530.

On Houston H. Feaster, individually and as Director Alabama State Docks Department, and on the State of Alabama by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid to Willis C. Darby, Jr., Esquire, Post Office Box 2565, Mobile, Alabama, 36601, and by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid to Honorable MacDonald Gallion, Attorney General of the State of Alabama, Montgomery, Alabama.

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